IN THE

ted States Court of Appeals

FOR THE NINTH CIRCUIT

ICK I. RICHMAN,

Appellant,

vs.

IDWELL, ROY E. HALLBERG, as Receiver of all the real and al property constituting the former Richman Trust, and JOHN TE, attorney for Receiver,

Appellees.

IDWELL,

Appellant,

vs.

ICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the ıd personal property constituting the former Richman Trust, and WHYTE, attorney for Receiver,

Appellees.

---

of Appellees Roy E. Hallberg, as Receiver of l the Real and Personal Property Constituting e Former Richman Trust, and John Whyte, s Attorney.

HYTE,
ney for Appellee Roy E. Hallberg, as Receiver,

HYTE,
opria Persona.

RICK & WHYTE,
th Broadway

TOPICAL INDEX

II.

The District Court did not err in ordering the Receiv reimburse himself from the monies in his possession t extent of $89.20, paid out of him for copies of his de tion and that of his attorney.....

III.

The District Court did not err in refusing to disqualify to settle the Receiver's account and to award fees t Receiver and his attorney.....

TABLE OF AUTHORITIES CITED

Cases

Rules

Statutes

No. 14702

IN THE

ited States Court of Appeals

FOR THE NINTH CIRCUIT

RICK I. RICHMAN,

Appellant,

vs.

TIDWELL, ROY E. HALLBERG, as Receiver of all the real and nal property constituting the former Richman Trust, and JOHN TE, attorney for Receiver,

Appellees.

TIDWELL,

Appellant,

vs.

RICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the and personal property constituting the former Richman Trust, and N WHYTE, attorney for Receiver,

Appellees.

---

of Appellees Roy E. Hallberg, as Receiver of ll the Real and Personal Property Constituting ie Former Richman Trust, and John Whyte, is Attorney.

FOREWORD.

ne interest of brevity appellant Frederick I. Richman ereinafter sometimes be referred to as "Richman," nt Lyda Tidwell will sometimes be referred to as ell," appellee Roy E. Hallberg, as Receiver of all the

JURISDICTIONAL STATEMENT.

This appeal is taken from a final order of the D Court settling the Receiver's account, allowing f the Receiver and his attorney, and providing fo tribution of funds in the hands of the Receiver. 190-196.] Appellants invoke the jurisdiction of this under 28 U. S. C., Section 1291.

STATEMENT OF THE CASE.

That portion of appellant Richman's statement case which sets forth alleged facts relating to his fications of error with respect to the Receiver and his ney[1] (as distinguished from alleged facts relating under the heading, "Statement *Re* Fees—Conduct F ing in Gross Abuse of Judicial Discretion," which in the material at pages 16-46 of Richman's opening Such portion of Richman's statement of the case i leading, biased, incomplete, inaccurate and untrue f following reasons:

(a) It omits numerous facts material to a deter tion of the issues herein touching the Receiver a counsel.

(b) It contains many statements which are u ported by any reference to the record. By way of tration, and without attempting to specify every ins beginning at the top of page 34 of Richman's op

---

[1]Specifications of error, Nos. 3, 5, 6, 7, 8, and 9. (App man's Op. Br. pp. 47-48.)
specifications of error with respect to Tidwell[2]) a

hree separate declarations of asserted fact are
n as many sentences. Not one of them is supported
ference to the record. Similarly, in the paragraph
ately following the quoted material on page 42 of
ief several items and amounts are mentioned as
part of the Receiver's accounting. None of these
s accompanied by a citation to the record, except
e first item which is followed by a reference to
ord [R. 110, Ex. 2] that does not support the

It is replete with instances where the allusion to
ord does not uphold the assertion made. Selected
dom are the following examples. At the end of
t paragraph on page 44 there is a reference to "R.
s upholding a certain statement. It does nothing
sort. Again, on page 24 it is asserted that the
er "intended to delegate his receivership duties to
Miss Cosgrove, the maiden name of his wife,"
d by a reference to "R. 380." The record fails
ain the assertion. The same is true of the state-
n page 22 that "Richman could not contact the
er after December 18, 1953. [R. 537-538.]"

rdingly, the Receiver and his attorney deem it neces-
set forth their own statement of the case. In
o aid this Court in comparing the facts recited in
tatement with the facts as they are recited in
n's opening brief, we shall first make a prelimi-
d general statement of the case, followed by a series
cal statements whose heading and subject matter

STATEMENT OF THE CASE (Continue

I.

Preliminary and General Statement.

On November 30, 1953, the District Court handed a memorandum decision terminating the Richman of which appellants Richman and Tidwell (brothe sister) were each a trustor, trustee, and beneficia the ground that Richman had been guilty of und fluence in procuring his sister's consent to the Trust 3-20.] On the same day the court[3] made an ord pointing Roy E. Hallberg, as Receiver of all th and personal property constituting the former Ri Trust, the bulk of that property consisting of five ment houses located in the City of Los Angeles, C nia, and named as follows: Canterbury, Fountain M La Loma, Oliver Cromwell and Western Arms. 21-22, 25.] The approximate value of the trust was $1,200,000. [R. 724.]

The order appointing the Receiver fixed his bo $75,000 [R. 23-24], and on December 2, 1953, th ceiver filed his bond after the same had been ap by the court. [R. 25-26.] Likewise, on Decem 1953, the District Court made an order autho and directing the Receiver to employ Messrs. FitzP & Whyte and John Whyte, as his attorneys.[4] [R. 2

---

[3]Whenever the word "court" is used herein without descriptive language, the reference is to the District Co Trial Court.

[4]Nearly all of the legal services performed by Messrs Patrick & Whyte in connection with receivership and later

February 26, 1954, after Tidwell and Richman, ties to the main litigation, had agreed upon a set- of their differences, the trial court made an directing that the Receiver "be relieved of his active of management, control and possession of the assets as the Richman Trust, as of five o'clock p. m., Sun- ebruary 28, 1954, and that the said Receiver . . . ver control and possession to Lyda Tidwell, plain- all the assets of the said Richman Trust, except- oney in bank and under the control of the said Re- . . ." [R. 55-57.] Thereafter, on March 18, the Receiver filed his first and final report and n for allowance of "reasonable" fees for his ser- s Receiver from about December 1, 1953, to and ng February 28, 1954. [R. 75-121.] Such peti- d not show in what amount fees were being asked, uired by Rule 18(c), Local Rules Southern District, rnia, for the reason that the Trial Judge had given permission "to leave it to the court to determine a able amount that the court would not insist upon ance with the rule that an amount shall be prayed R. 254, 624-625, 938.] On the same day the Receiv- unsel filed his original petition for allowance of fees gal services performed by him on the Receiver's from about December 1, 1953, to and including 17, 1954. [R. 58-74.] The attorney's petition for the sum of $3,000.00 as compensation for ordi- egal services plus such further sum as the court think reasonable for extraordinary legal services.[5] .]

On April 6, 1954, Richman filed lengthy obje
and an answer to the report and petitions of the Re
and his attorney for fees. [R. 125-144.] At a h
held on April 12, 1954, the court separated the iss
how the money in the hands of the Receiver shou
divided between Tidwell and Richman from the
respecting settlement of the Receiver's report an
allowance of fees to him and his attorney, and fixed
11, 1954, as the date for commencement of the h
on the latter issue. [R. 235, 237, 243.] At the
hearing Richman's counsel announced his intention t
the depositions of the Receiver and his attorney [R.
and such depositions were taken in April 1954.
871, 922.]

The hearing on the settlement of the Receiver's
and the allowance of fees to him and his counsel ac
began on May 12, 1954 [R. 246], at which tim
Receiver's attorney filed a supplemental petition for
ance of fees for legal services rendered from Marc
1954, to and including May 10, 1954. [R. 164
During the course of the proceedings the depositio
Hallberg and Whyte were introduced in evidence.
250, 544.] The hearing continued for approximatel
and one-half days, exclusive of final argument.
246, 265, 340-341, 416-417, 439, 540, 613, 635, 70
755.] All of the time spent in the hearing was de
to defending the Receiver against Richman's atta
his report and petition for fees and to laying a foun
for determining the amount of a reasonable fee
Receiver, except that a part of one afternoon sessio
540-571] and a part of one morning session [R. 614-629]

ing the course of the hearing Richman's attorney ed that his client was not attempting to surcharge eceiver personally but rather, Mrs. Tidwell, the ful litigant in the main action, and this was so tood by the Trial Court. The statements made in gard were as follows:

"The Court: Well, I think the objections as filed d undertake to apply the surcharge against the eceiver, but the statement counsel made in court as what his objective is, or one of his objectives in e matter here is to have it [392] applied against rs. Tidwell, who is not the receiver. Is that right?

Mr. Enright: Yes, your Honor.

The Court: So the Receiver came here upon pleadgs which undertook to have him surcharged, but e theory of trial, which was announced rather rly in the trial, is that the attempt to surcharge not against the Receiver, Mr. Whyte's client, but gainst the prevailing litigant in Tidwell vs. Richan. Does that state it?

Mr. Whyte: Is that your position, Mr. Enright, at you are not now trying to surcharge the Reiver?

Mr. Enright: We surcharged that Receiver. We ked that it be a charge upon the funds in his hands. hat is the way we pleaded it. That is the way we ated it in the inception. I am sure the Receiver derstood it that way.

The Court: Well, I don't know whether he clearly derstood it that way at the beginning, Mr. Enght, because I didn't. And while I have great

But it became apparent in this trial settling th
ceiver's fees that the attempt is to surcharge the
[393] or, as I stated originally, to surcharge
Tidwell instead of taking it out of the pocket
Receiver.

Now, has it all been stated clearly?

Mr. Enright: I think so, your Honor. I
like to analyze the record." [R. 617-619.]

"Mr. Whyte: I would like to inquire of the
and [459] inquire of Mr. Enright, whether th
any intention now to shift the position whicl
expressed this morning, when Mr. Fussell was
to the effect you were not seeking to charge th
charge to the Receiver personally for any of
claimed items.

Now, is that correct, Mr. Enright?

The Court: I understand Mr. Enright is s
to charge the fund which is in the Receiver'
session.

Mr. Whyte: Very well.

The Court: Is that right, Mr. Enright?

Mr. Enright: Yes." [R. 685-686.]

Consequently, there is no issue before this Cour
reference to any attempt to surcharge the Receive
Specifications of Error, Nos. 3 and 8, appearing at
47-48 of Richman's opening brief, should be disreg
insofar as they allege error below in failing to surc
the Receiver.

On November 19, 1954, the District Court signe
filed a final order settling the Receiver's account,
fees, and distributing the funds in the hands of th

) to be the reasonable value of the Receiver's services
ne sum of $1,800 to be the reasonable value of his
ey's services, and it fixed their respective fees at
amounts. [R. 194.] The court also directed that
eceiver reimburse himself from the monies in his
sion to the extent of $89.20 paid by him for copies
depositions used at the hearing on his report and
n for fees and his counsel's petition for fees. [R.

ellant Richman has appealed from the whole of
rder of November 19, 1954. [R. 196-197.]

TATEMENT OF THE CASE (Continued).

II.

Topical Statements.

leged Representations—Receiver's Ability, Experience and Availability.

pages 16-19 of his opening brief Richman strives to
the impression (which, as we shall see, is wholly
ranted) that at the hearing on November 30, 1953,
ich the District Court announced its intention to
t Hallberg as Receiver, Hallberg made certain rep-
ations, some or all of which were untrue. To this
quotes several statements made by the court on that
on (Richman's Op. Br. pp. 16-19) but mentions no
ents made by Hallberg, except that the Receiver
ed in" with the remark "That is correct" at the
of one of the court's observations (Richman's Op.
17), affirmed that he had a place of business in

tations ("The Receiver didn't come to the court and any representation") [R. 235], to the extent that "chiming in," such affirmation, and such response possibly be construed as representations by the Rec they were truthful in every particular.

Insofar as they contained any declarations of the court's observations to which Hallberg replied, ' is correct," were as follows (Richman's Op. Br. p.

"The Court: . . .

". . . I have explained to them that you had experience in this type of work in Chicago your main vocation for some years was in the agement of real properties, sometimes in conn with court receiverships, and that your experien it locally has been in the management of your real properties, which were of income nature of similar properties owned by either you or wife's relatives.

Mr. Hallberg: That is correct."

During the years 1930-1931, in Chicago, Illinois, berg's main vocation was the management of real pr ties in connection with a court receivership. [R. 378, 381-383, 465-466, 884-885.] He also had loca perience in the management of real properties of a come nature owned by himself and his wife, consi among others, of a 16 unit apartment building in Pasadena and a four family unit in Pasadena. 369-370, 881-882, 889-891.]

Furthermore, his affirmation that he had a pla business in Pasadena was perfectly truthful inasmu

s significant to note that at this same hearing on nber 30, 1953, Richman's counsel expressed his com- confidence in the Receiver's integrity and ability when ted, "I am satisfied that your Honor would not have ed anyone except a man of not only integrity, but of ." (Richman's Op. Br. p. 18.) It is of further cance to note that before appointing Hallberg as the ver the Trial Court invited counsel for both Richman idwell to ask the Receiver any questions they wished, o questions were asked. [R. 210-216, 259.]

B. Petition to Disqualify.

April 30, 1954, prior to the hearing on the Re- 's report and petition for fees and the petition of torney for fees, appellant Richman filed a petition squalify Honorable Ernest A. Tolin, the District , upon the ground that the Judge was a material ss to the determination of what fees should be paid eceiver in that the Receiver had made certain alleg- alse representations to the court before his appoint- when the court was interviewing him with respect s availability, experience and qualifications. [R. 54.] The petition to disqualify further alleged that uld be necessary for Richman to call the Trial Judge witness to these alleged misrepresentations. [R.

we have just seen, if the Receiver can be said to made any representations to the court before his tment, his statements were entirely truthful. More- everything said at the hearing at which it is claimed

Under these circumstances it would have been w
unnecessary for Richman to have called the Trial J
as a witness to any alleged representations made by
Receiver at the hearing.

C. Receiver's Availability and Earnings.

With respect to Hallberg's availability to act as
ceiver, the record reveals the following:

At the time he took his oath of office as Receive
December 2, 1953, Hallberg did not know that he w
be employed by the County of Orange. [R. 363,
379, 355-357.] His work for the County did not
until December 7, 1953. [R. 326.] He had no de
hours of employment but was merely required to
in a 40 hour week of eight hours a day, Monday thr
Friday. [R. 327-328, 335, 343, 346-347.] About
of his work consisted in the preparation of data
regard to assessing and appraising; such work coul
done outside the office or at his home in the even
[R. 356-360.]

At the time it appointed Hallberg as Receiver
District Court envisaged his job as only "part-
employment." In this connection the court said:

> "The Court: . . .
>
> . . . . . .
>
> Knowing that Mr. Richman had carried on
> ventures [19] while he managed these prope
> I thought that while it would be part time, it w
> be a substantial part-time employment, and ha
> confidence in the man's integrity and ability, I a

ıcerning the time which he personally spent on the ership, Hallberg testified as follows:

"Q. (By Mr. Enright): Actually, the physical ıethod of operation was that commencing Decem- er 7th and all through February 28th, and you would ıake trips up to Los Angeles on the weekends or ome up Friday night after completing your work or the County of Orange, isn't that right? A. I ame up during the week. I came up Friday, it is rue. I was there Saturday. I was even there on unday.

Q. Friday evening, Saturday and Sunday? A. During the week I was there on various occasions." R. 434-435.]

"Q. Well, generally, didn't you do your checking n the operation of these apartments on the week nd, [89] Mr. Hallberg? A. I did some of that.

Q. I mean, that was the rule, wasn't it? A. Not necessarily.

Q. You'd come in on week ends, Saturdays and undays? A. Not necessarily. I came in during the veek some evenings, as well as days. * * *" R. 905.]

en one of the apartment house managers was asked w many occasions she had seen Hallberg during the month's period of the receivership, she replied:

"A. I would say between seven, not less than welve times; perhaps seven, eight or nine times." R. 503.]

other apartment house manager, who testified that

in which event she would not have seen the Rec
[R. 477-479.]

During the entire course of the receivership Hal
had the assistance of a full-time bookkeeper [R.
first, Mr. Harrison, who had been Richman's secretar
bookkeeper [R. 410-411], and then Miss Findeisen.
270.] He also was materially assisted throughout b
wife, who represented him in many of his contacts
the apartment house managers and with various se
and trades people. [R. 263-264.] In addition
Hallberg supervised the decorating of apartments,
periodic trips to collect the rents and deposited the
the bank, purchased supplies, and helped with the
keeping. [R. 263-265, 267-268.] She received no
pensation for any of her services to the receivership.
269.]

At the same time that he was managing the affai
the Richman Trust from 1945 to 1953, Richman
carrying on a private law practice in the City of
Angeles, which included such matters as the organiz
of corporations, the preparation of tax returns, an
drafting of contracts. [R. 528-529, 713-714.] D
his last year as manager of the Richman Trust, h
voted considerable time to preparing for and attendin
trial of Mrs. Tidwell's action against him to terminat
Trust. [R. 714-715.] From January, 1950, until
the Trust was terminated, he also acted as President o
Consolidated Mortgage Company. [R. 731-732.]

With respect to Hallberg's earnings and exper
prior to the receivership (exclusive of his accountin

majored in business administration at Northwestern rsity where he received the degree of Bachelor ience and Commerce in 1927. [R. 290.] From to 1931, in Chicago, Illinois, he was employed by a er on a full-time basis to manage certain real prop- in receivership. The properties consisted of from 50 buildings, including apartments, a large apart- hotel, flats, bungalows, and residences. One of these ngs, an apartment hotel, was quite similar to the r Cromwell apartment building in the Richman . The buildings as a whole were of about the class as the Richman Trust buildings. [R. 377- 381-383, 465-466, 884-885.]

a period of 13 years before January 1947, he was yed by the Garrett Company, wine merchants in York. [R. 367-368.] During his last three or four with this company he received an annual net com- tion (before taxes) of $40,000. [R. 891-892, 367- He came to California about January 1947, as ern Regional Sales Manager for Refrigeration Cor- ion of America at a salary of $10,000 a year, plus erride based on volume. [R. 875.] From the time s arrival in California in 1947, until he moved to ge County in 1952, he resided in the City of Pasa- [R. 367-368.] He remained with Refrigeration oration of America for about two years, when the any dissolved. [R. 875.]

out 1949 Hallberg began having trouble with his —for months he was in bed and in the hospital—and dingly his employment record from then until the

December 1949, he and Mrs. Hallberg purchased a 16 apartment house in South Pasadena, which they hel approximately 11 months, and in which they inst Mrs. Hallberg's mother as manager. [R. 369-370, 890.] Hallberg himself performed many of the agerial duties [R. 369-370] and even did hard phy work on the premises, including painting, carpeting, h ing doors, laying floor tile, and repairing the roof. 463-464, 910-911.] About January 1951, Mr. and Hallberg also purchased a four unit apartment bui in Pasadena, which they still own. [R. 370, 882, 891.]

Mrs. Hallberg received the degree of Bachelor of ness Administration from the University of Minn in 1932. [R. 516.] For a time she was one of women investment counselors in New York. [R. She took a year's course in color consulting at the T hagen School of Design in New York and was consultant for certain properties in that city. [R. 385.] She holds a real estate broker's license in fornia. [R. 269, 270.]

D. Receiver's Services.

The Receiver's active duties with regard to the mar ment and operation of the former Richman Trust b about December 1, 1953, and continued until Februar 1954. [R. 255.] The nature of the services perfo by him during this period is too varied and exte to relate in detail, but in general it consisted in han the myriad problems which arise in connection wit operation of five large apartment houses, such as

of account (the Receiver set up a new and improved keeping system), and the purchase of supplies; as as in conferring with representatives of government cies, inspecting the buildings from time to time to mine whether their physical plants were in good ing order, comparing the rentals with other apartment ngs in the neighborhood, and appearing in court at us hearings. [R. 77-84, 261-262, 281-284, 287-290, 95, 892-896, 912-913.]

February 26, 1954, the District Court made its relieving the Receiver "of his active duties of man- ent, control and possession of the assets known as Richman Trust, as of five o'clock p. m., Sunday, uary 28, 1954," and directed the Receiver to "give control and possession to Lyda Tidwell, plaintiff, l the assets of the said Richman Trust, excepting y in bank and under the control of the said Receiver, ." [R. 56.] On the same day the Receiver was med of the sum and substance of this order by his ney. [R. 417-419.]

his statement of the case Richman asserts in sub- e that the Receiver violated the terms of this order least three particulars, to wit:

He failed to retain control of the petty cash fund 85 in the hands of the apartment house managers.

He failed to collect from the managers the rents had been collected by them on February 26, 27, and 954.

On February 27, 1954, he made a monthly payment

A proper understanding of the facts will show tha
Receiver did not violate the terms of the above menti
order in any one of the particulars specified.

First, with respect to the minor amounts of petty
in the hands of the managers, totalling $785, these f
were used to pay small day-to-day expenses, such as
refunds, salaries of extra help, gratuities to persons
moving cans or other "stuff" from the apartment b
ings, etc. [R. 480-482, 419-420.] These funds were
lost or dissipated but were simply left in the build
and became the property of Mrs. Tidwell when she
over their control and possession as of 5:00 P
on Sunday, February 28, 1954. [R. 420-421.]
Receiver did not take possession of these funds for
good and sufficient reason that they were a part of
working properties of the buildings [R. 420-421]
therefore necessary to their continued operation. In
regard the Trial Court declared in substance in its m
randum to counsel, dated October 5, 1954, that the
cash fund existed merely "as an operating incident of
apartment house so that the resident managers would
available small sums of money for the purposes that
common to the day-to-day business transacted by resi
apartment house managers." [R. 182, 185-186, 188.

Second, with respect to the rents collected by the
agers on Friday, Saturday and Sunday, the 26th, 27th
28th of February 1954, they amounted to $1,29
[R. 601.] Hallberg did not collect these monies from
managers for two cogent reasons: (1) the perio
question being a week end, the banks were closed,
inasmuch as the Receiver's office had no safe there

was prevented from collecting them by reason of the that Mr. Udall, Mrs. Tidwell's agent, made the ds of the apartment houses on Sunday, February old the managers that he was in charge, and collected monies himself. [R. 932-933, 420, 429-430.] In connection it appeared that these monies represented ents made by tenants in advance on account of their due on the first of March [R. 182-183], wherefore funds rightfully belonged to Mrs. Tidwell under the of the aforesaid order of February 26, 1954.

ird, with respect to the payment by Hallberg on uary 27, 1954, of an installment on a trust deed not until two days later [R. 423], it should be observed under the language of the Court's order of February 954, the Receiver's "active duties of management, ol and possession of the assets known as the Rich- Trust" continued until 5:00 of the afternoon ebruary 28. [R. 56.] Thus, at the time he made ayment on February 27, he had ample power to do so. over, the Trial Court was of the opinion that s not unwise of him to pay a debt of the receiver- two days in advance of its due date. [R. 186, 868- It is significant to note that during his term as ger of the Trust Richman himself sometimes made ayments on the same trust deed in advance of their ate. [R. 535-536.]

conclusion, it should be noted that not one penny y of the three items discussed above was lost or ated. Thus, even if it be assumed for purposes of

E. Accounting Services and Experience.

As previously stated, the Receiver always employ full-time bookkeeper during his term as Receiver. 270.] For about two-thirds of that term the b keeper, Mr. Harrison, was the same bookkeeper who kept the Trust books while Richman was managing assets. [R. 270, 410-411, 533.] Hence, insofar as b keeping problems were concerned, the Receiver's d were mainly supervisory.

Hallberg had had sufficient accounting training experience to render him capable of exercising such su vision. In his college days at Northwestern Unive he took two years of accounting and did part-time counting work while going to school. [R. 911-912.] had two years public accounting in the field in Chic [R. 737.] He had the "complete management" of th to 50 buildings in receivership in Chicago in 1930- [R. 377-378, 381-383, 884-886], which presumably have included supervision of their books of account. also did some of the bookkeeping for Morgan Constru Tooth Corporation in 1951 [R. 448-449, 878], and ap ently he set up the books for Hall Industries [R. with whom he was associated from October 1948 to A 1951. [R. 879-881.]

Insofar as Richman may be attempting to discredit Receiver and his counsel for not having filed an accoun within 60 days after the Receiver's appointment, as quired by Rule 18(b), Local Rules Southern District, fornia (Richman's Op. Br. p. 33), the Trial Court pletely absolved Hallberg and Whyte from any blam

F. Refrigeration Breakdown.

hman's partially unsupported and much distorted ıent of the case under this subdivision seeks to show Hallberg was remiss in the performance of his duties ceiver with respect to this refrigeration problem. only necessary to exhibit the facts in their proper ctive in order to refute any such charge against erg.

out the middle of January 1954, trouble developed the refrigeration equipment at the Western Arms ment building. [R. 284.] In accordance with ins previously given her by the Receiver, the man- called representatives of the California Refrigera- Company who went to work on the matter promptly. 284.] A report of the trouble was made to the ver on the evening of the same day, and he was that the refrigeration repairmen were on the job. 85.] Before noon of the following day the Receiver conversations with the representatives of two re- ration companies and instructed one of these com- s to finish the job of repair. [R. 286, 435-439.] Receiver personally visited the apartment house two after the breakdown and found the refrigeration n working perfectly. [R. 435-436, 525.]

G. Air Pollution—Criminal Citation.

re, again, it is only necessary to state the facts and accurately in order to demonstrate that the ver and his attorney acted properly and prudently ndling an air pollution problem resulting from a

About December 3, 1953, Richman turned over to Receiver certain contracts which he had made with Pollution Control, Inc. for the installation of air pollu control equipment in the incinerators at the Oliver C well and Canterbury apartment houses. [R. 387.] A December 10, the Receiver received an authorization the County of Los Angeles for the installation of equipment [R. 387-388], and not long afterward received engineering drawings of the equipment t installed by Air Pollution Control, Inc. [R. 388.]

On December 24, 1953, the Receiver asked his atto to examine these contracts. [R. 940, 388.] The atto did so and returned them to the Receiver about Dece 30, at the same time orally advising the Receiver "the contracts were valid and binding, that they s be carried out." [R. 556-557, 388-389, 753, 941.]

About January 1, 1954, the Receiver instructe bookkeeper, Harrison, to mail the engineering dra to Air Pollution Control, Inc., which Harrison to do. [R. 753, 405-406, 518-519.] Subsequently, January 13, the Receiver received a notice from th Angeles County Air Pollution Control District cha that the Oliver Cromwell was violating Section 242 the California Health and Safety Code by dischargi cessive smoke from its incinerator. [R. 711, 388- Shortly after receipt of this notice Harrison telep Mr. Manalis, the vice-president of Air Pollution Co Inc., and instructed his company to proceed wit installation at the Oliver Cromwell. [R. 646, 519- With regard to the notice from the Air Pollution C

January 22, 1954, Hallberg found the drawings for
r pollution control equipment at his office at the
Cromwell [R. 642], Harrison having failed to
out the instructions given him about the first of
onth to forward them to Air Pollution Control, Inc.
53, 405-406, 518-519]. Hallberg immediately wrote
r to Air Pollution Control, Inc. enclosing the draw-
[R. 646-647.]

ner on January 27 or January 29, 1954 (the record
clear), a criminal complaint was issued by the
y of Los Angeles naming Richman and one of the
nent house managers as defendants. [R. 406-407.]
y event the record is clear that Whyte had no knowl-
that Richman had been named as a defendant in the
aint until January 29, when he was so advised by
son. [R. 558, 639-641, 940.] Whyte immediately
to get in touch with Richman and his counsel but
unable to locate either of them, whereupon he left
at Richman's office between 4:00 and 5:00
. on January 29, concerning the pendency of the
and the fact that a hearing therein had been set
ne morning of February 1. [R. 407.] Mr. Joseph
nright, representing ~~Whyte, representing the Rich-~~ Richman, and Whyte, respe-
and apartment house manager, appeared at the hear-
nd upon their joint request the matter was continued.
60-961.] Thereafter, at a conference on February 9
he representative of the Los Angeles City Attorney's
in charge of the case, Hallberg, Whyte and Rich-
counsel persuaded him to dismiss the suit. [R. 965-
At no time was anyone fined or was any financial

A final key fact, which is vital to any fair state of the facts under this heading and which does not a in Richman's brief, is the admission by Mr. Manal Air Pollution Control, Inc. that for a period comme from ten days to two weeks before January 15, 1954 continuing until three or four weeks after Januar 1954, a particular type of metal needed for the instal of the air pollution control equipment at the Oliver C well and the Canterbury was not available to his com wherefore the company was unable to make the instal during this period in the absence of such metal. 704-707, 709, 547-549.] Hence, even if it be assume Hallberg and/or Whyte failed to act as reasonably dent men in dealing with the matter under consider (an assumption which, as we have seen, is not supp by the facts), any failure on their part to confor standards of due care was not the proximate cause o issuance of the criminal complaint for the reason even if they had they acted with all possible skil dispatch, the installation still could not have been before the complaint was issued because Air Pol Control, Inc. did not have the necessary materia make the installation.

H. Receiver's Fees.

At the beginning of this subdivision of his statem the case Richman devotes several pages of his br an effort to make capital of the fact that the Receiv not specify in his petition for fees the amount o fee he was asking for, as required by Rule 18(c), Rules Southern District, California. (Richman's O

petitions for fees that "if they wanted to leave the court to determine a reasonable amount that ourt would not insist upon compliance with the hat an amount shall be prayed for. But they could it as reasonable or they would state a specified t." [R. 254.] The District Court further asserted I felt at the time . . . that asking for rea- e fees and leaving it to the court to determine what hould be upon hearing the evidence was the better e." [R. 625.]

re is abundant evidence in the record to sustain the Court's finding that the reasonable value of the er's services is the sum of $6,000. [R. 194.] In onnection the court heard the testimony of Mr. on Mann, a licensed real estate broker and real appraiser, who for 21 years was connected with Rowan & Co. in Los Angeles, the second largest tate management firm in the West. [R. 298-299.] first being qualified as an expert witness with to the management of real estate, including apart- uildings, and the compensation paid for such man- nt in the Los Angeles area [R. 298-299, 308-310], testified that based on the size of the receivership (it was valued at approximately $1,200,000) [R. the duties performed by the Receiver, his education ast employment, the size of his bond ($75,000) -26], and the amount of gross receipts during the of the receivership ($94,153.59) [R. 105], he was opinion that the reasonable value of the Receiver's s was 5% of gross income, or $4,707.67. [R.

In explaining why it fixed the Receiver's fee at $
the Trial Court stated:

"The Receiver has not prayed for a specifi
in compensation for his services but has set fo
detail what his services consisted of and pray
reasonable fees. The Court bears in mind tha
fendant has testified that ten per cent of the
income was a reasonable management fee whe
fendant rendered the management service. In
curing the contract with Plaintiff for that fee,
was an over-reaching and undue influence. Th
was excessive. The Court bears in mind, also
there is evidence in the record that various perce
including five per cent and six per cent wou
a reasonable management fee. The Receiver i
instance acted as a property manager with the
gations of full trustee and of an officer of the
Mr. Richman, with whom he had to deal, is a
given to hostile and aggressive attitudes.
evident that he exercised these in his relations
the Receiver. The Receiver was obliged
through the problem of setting up his own ma
ment plan. [234] He was only allowed to e
the plan for a brief period before the receiv
was abruptly terminated. He was placed in
session hurriedly and he was terminated ab
It then became necessary for him to file an ac
ing, and the accounting procedure was exh
to its ultimate in searching into the conduct
Receiver during and even before his stewa
He spent several days in Court defending the a
istration of his trust and undergoing a most
and insulting scrutiny of his every act and on

m and the labors of making up his accounting and
plaining and defending it in Court. The Court
nds it to be a true and correct account." [R. 186-
38.]

o the manner in which the Receiver was treated by
an and his counsel, the Court remarked:

"The Court: . . .

"He was brought before the court almost as if
e were accused of a crime here and was treated by
me of the parties to the suit, or by one of the
rties to the suit and one of the attorneys to the
tion with less respect than I have seen embezzlers
eated when I was handling the criminal calendar
the court." [R. 857-859.]

pages 41-42 of his opening brief Richman attempts
pare the total amount of expenses incident to the
ion of the receivership, including fees allowed the
er and his attorney, with the amount which would
een paid to him under his contract with the Trust
e been managing the assets during the period of
ceivership. He concludes that the receivership ex-
were about $400 more than they would have been
e remained in control. Apparently the purpose of
mparison is to show, if he can, that the fees of
ceiver and his attorney are too high.

lly apart from the fact that several of the figures
which he bases his calculations are not supported
record,[6] and the further fact that he fails to men-
rtain items which would have increased the Trust

of the receivership [R. 605-606], his comparison is leading and of little value. This is true becaus Receiver's duties were much more burdensome than would have been had he, like Richman, been in cont the assets for an extended period and thus had had to put the Trust affairs on a normal well-oiled day-t basis. Here, however, the Receiver was confronted the task of taking possession of unknown properties familiarizing himself with them, installing his syste management and setting up his books, and then, only months later, being compelled to close the books and render possession of the assets.

I. Objections to Receiver's Report.

We have already discussed all of the items men in this subdivision of Richman's statement of the under previous headings, except (1) the failure t Richman's claim in the sum of $3,104.22, and (2 alleged failure by the Receiver to account for a deposit on Workmen's Compensation and an a refund thereon of $158. (Richman's Op. Br. p. 4

With respect to (1) above, although Richma claim that he was entitled to a management f $3,104.33 for his services to the Trust in Nove 1953, Hallberg never received a bill or other comm tion from him stating that this amount, or any amount, was due him. [R. 426-427.] Actually it have been most unwise for the Receiver to have pai claim inasmuch as the District Court later held th amount claimed was based on a charge of 10% of income of the Trust as fixed by a contract under

nent on a *quantum meruit* basis only. [R. 182-
The Court ultimately fixed Richman's management
such service at $1,862.60, or 6% of the gross
s of the Trust in November, 1953. [R. 194-195.]

respect to (2) above, the Receiver did account
e $400.00 deposit on Workmen's Compensation.
7.][7] As for the Receiver's alleged failure to ac-
for a refund on this deposit, he could not have
o because no refund was shown to have been re-
by him during his term as Receiver. [R. 661-662;
9.][8]

J. Attorney's Fees.

ngely enough, this subdivision of Richman's state-
f the case does not challenge as unreasonable the
$1,800.00 actually allowed the Receiver's attorney
tead attacks the amount prayed for in the attorney's
for fees, namely, $3,000.00 for ordinary services
unspecified amount for extraordinary services, as
excessive. (Richman's Op. Br. pp. 44-46.) That
n of $1,800.00 which was in fact allowed is an ex-
ly modest fee is shown by the following facts:

attorney's original petition for fees, filed March 18,
sought an allowance of fees for services performed
on behalf of the Receiver from about December
3, to and including March 17, 1954. [R. 58, 74.]
rvices rendered during this period consisted, among

statement at page 44 of Richman's opening brief that the

others, in advising the Receiver or his agents, c
average of at least three days a week during the
three month's period of the receivership, with resp
numerous problems connected with the administrati
the receivership; preparing petitions, such as a pe
for authority to pay Christmas bonuses and a petitio
authority to renovate individual apartments; court ap
ances in obtaining approval of such petitions; fre
telephone calls from and to the attorneys for Ric
and Tidwell regarding the progress of the receiv
and problems incident therein; conferences and a cou
pearance in connection wtih the dismissal of the cri
complaint hereinbefore discussed under subdivisio
conferences regarding termination of the receive
and preparation of the Receiver's first and final
and petition for fees. [R. 60-72, 541-542, 951-
Whyte had practiced law in Los Angeles for more
12 years prior to his appointment as attorney fo
Receiver. [R. 967-968.]

On May 12, 1954, Whyte filed his supplemental
tion for fees for the period commencing March 18,
to and including May 10, 1954. [R. 164-170.]
services included, among others, representing the Re
upon the taking of his deposition and conferring wit
and his wife and with other potential witnesses in
paring his defense to Richman's attack upon his
and petition for fees. [R. 166-169.]

As previously noted, the hearing on the Receiver
port and petition for fees began on May 12, 1954
lasted for four and one-half court days, excluding

R. 614-629] when the subject of Whyte's fees was consideration, the hearing was devoted exclusively ending the Receiver against the attack on his re- nd petition for fees and to laying a foundation for ining the reasonable value of his services. Whyte s the Receiver's attorney throughout the hearing.

ert F. Laugharn, Esq., a Los Angeles attorney izing in bankruptcy and liquidation matters, was d as an expert witness with regard to receivers ceiverships. [R. 559-561.] Upon the basis of the lleged in Whyte's original and supplemental peti- or fees, and in view of the size and extent of the rship estate, and the problems encountered during ceivership, Laugharn expressed the opinion that nsation of $1,000.00 per month for each of the months of the receivership would not be excessive. 61-565, 568.]

h reference to the compensation due Whyte for ing the Receiver in court against Richman's attack Receiver's report and petition for fees,[8a] Paul Fus- e of the senior partners in the Los Angeles law firm Melveny & Myers, was qualified as an expert witness 14-616] and testified that based upon the size of ceivership estate, the objections made by Richman Receiver's report and petition for fees, and the onsumed by Whyte in defending such report and n for fees against Richman's attack thereon, he was opinion that the reasonable value of Whyte's ser- n conducting the defense was between $1,000.00 200.00 [R. 616-619.]

Whyte is criticized at pages 44-45 of Richman's
ing brief for having allegedly given improper adv
the Receiver, three asserted instances of such all
improper advice being specified, to wit:

(1) He and the Receiver took over the Trust's
account and requested managers to turn over mo
them, and in fact collected money from one of the
agers, before the Receiver was appointed.

(2) Whyte failed to advise the Receiver that
performance of the contracts with Air Pollution C
Inc. might result in criminal prosecution.

(3) He allegedly erroneously assumed that Ri
had no right to contact the Receiver's bookkeeper
Harrison, concerning the Trust property or the a
the Receiver.

These points will be answered briefly and in their
order.

As to (1), the Receiver was appointed by a court
made and filed on November 30, 1953. [R. 2
The steps allegedly taken by the Receiver and his at
were taken on December 1, 1953, after the Rec
appointment. [R. 552, 947-948.] The only action
at the bank was to transfer the former Richman
account to the Receiver's name. [R. 552.] This
urgent matter. [R. 554-555.]

It is true that the Receiver did not file his bond an
his oath of office until December 2. [R. 25-26.]
nically, therefore, the Receiver and his attorney h
authority to take any of the steps which they did t
December 1. Richman does not contend, however,

· such petty fault finding does anything more than
he time of this Court.

o (2), why should Whyte have advised the Re-
that non-performance of the contracts with Air
on Control, Inc. might result in criminal prosecu-
About December 30, 1953, he told the Receiver
e contracts were binding and instructed him to
hem out, "to go ahead." [R. 388, 556-557, 753.]
l no reason to believe that his instructions would
or were not being, obeyed. He was not informed
ime that performance of the contracts for installa-
the pollution control facilities was being held up
the month of January, 1954. [R. 943.] Neither
advised that the Receiver had received the notice
by the Air Pollution Control District on January
54. [R. 543-544.] The first time he knew or
ably could have suspected that anything was wrong
or about January 27, when he learned from Har-
nat a criminal complaint either was or was about to
ed. [R. 557-558.]

lly, as to (3), what difference does it make whether
assumed, either rightly or wrongly, that Richman
right to contact Harrison, the Receiver's book-
? It is not contended that Whyte ever took any
in reliance upon his assumption or that Richman
revented from obtaining the information he de-

ally Whyte had every reason to assume as he did. The
order appointing the Receiver expressly forbade Richman

The Issues Presented.

The principal issue presented on this appeal with
ence to the Receiver and his attorney is as follows

Did the District Court abuse its discretion in awa
a fee of $6,000.00 to the Receiver and a fee of $1,8
to his attorney?

There are two other minor issues, to wit:

(1) Did the District Court err in ordering the Re
to reimburse himself from the moneys in his possess
the extent of $89.20, paid out by him for copies
deposition and that of his deposition and that of his
ney, said depositions having been taken by Richma
used at the hearing on the Receiver's report and p
for fees and the petition of his attorney for fees?

(2) Did the District Court err in refusing t
qualify itself to settle the Receiver's account a
award fees to the Receiver and his attorney?

Summary of Argument.

1. The District Court did not abuse its discret
awarding a fee of $6,000.00 to the Receiver and a
$1,800.00 to his attorney.

2. The District Court did not err in ordering th
ceiver to reimburse himself from the moneys in his p
sion to the extent of $89.20, paid out by him for co
his deposition and that of his attorney.

3. The District Court did not err in refusing
qualify itself to settle the Receiver's account and to
fees to the Receiver and his attorney.

ARGUMENT.

I.

istrict Court Did Not Abuse Its Discretion in warding a Fee of $6,000.00 to the Receiver and Fee of ~~$18,000.00~~ 1800.00 to His Attorney.

s axiomatic that the amount of compensation d to a receiver and his counsel is a matter within nd discretion of the trial court and will not be dis- upon appeal in the absence of a clear showing that al court has abused its discretion. (*In re Cash- rth, Grow-Sir* (2d Cir., 1913), 210 Fed. 24, 26; *g & Exploration Corporation, et al. v. Webster* Cir., 1934), 69 F. 2d 416, 418; *Venza v. Venza* , 101 Cal. App. 2d 678, 680.) This principle is well in the case of *Venza v. Venza* (*supra*), to wit:

"The rule is well established that the compensation be allowed receivers and their attorneys is primarily ithin the sound discretion of the trial court. This necessarily so, for, as the court stated in *Kan v. sang,* 90 Cal. App. 2d 538 [203 P. 2d 86], the trial urt is 'in a better position to know the necessity r the services performed by the receiver and his torney and to assess their reasonable value' (p. 541) an is a reviewing court. Thus, it follows that the absence of a clear showing of an abuse of scretion by the trial court this court would not be stified in interfering therewith. (*Adams v. Woods,* Cal. 306, 322.) We conclude that the record does ot disclose such a showing by defendants." (P. 30.)

amount allowed. (*Estate of McLaughlin* (1954), 4
2d 462, 465-466 (trustees' fees); *Estate of C*
(1950), 97 Cal. App. 2d 651, 655 (trustee's fees
Dehner's Estate (1941), 230 Iowa 490, 298 N. W
657 (attorney's fees).) This rule is well expres
Estate of McLaughlin (*supra*), a recent decision
Supreme Court of California, stated in the followin
guage:

> "Pursuant to section 1122 of the Probate
> the trustees must be allowed 'such compensati
> services as the court may deem just and reaso
> The allowance rests in the sound discretion
> trial court, whose ruling will not be disturb
> appeal in the absence of a manifest showing of
> (*Estate of McLellan,* 8 Cal. 2d 49, 55 [63
> 1120]; *Estate of Mills,* 119 Cal. App. 2d 8, 9
> P. 2d 1028]; *Estate of Willardson,* 101 Cal. A
> 777, 780 [226 P. 2d 369].) The trustee must p
> to the trial court satisfactory evidence of the
> acy and propriety of the items in his account (
> *v. Johnson,* 174 Cal. 521, 527 [163 P. 893];
> *of McCabe,* 98 Cal. App. 2d 503, 505 [220
> 614]); but the sole question before an appellate
> when the fee allowed him is attacked as exces
> whether there is substantial evidence to suppo
> trial court's finding. (*Estate of Griffith,* 9
> App. 2d 651, 655 [218 P. 2d 149].) A findin
> such a fee is a reasonable one states the ultima
> in issue and is formally sufficient. (*Estate of*

---

*" 'On the settlement of each such account the court sha
the trustee his proper expenses and such compensation for
as the court may deem just and reasonable. Where th

Cal. 2d 512, 514 [116 P. 2d 438]; *cf., Estate of illardson, supra,* 101 Cal. App. 2d at 780; *Estate Scherer,* 58 Cal. App. 2d 133, 138-139 [136 P. 103].)" (Pp. 465-466.)

s order of November 19, 1954, from which Rich- appeal herein is taken, the District Court made the ng findings with reference to the reasonableness fees allowed the Receiver and his attorney:

". . . the reasonable value of the services of by E. Hallberg as receiver is the sum of $6,000.00, hich the Court finds to be the reasonable value of id services, and his fees are hereby fixed at the sum $6,000.00; the reasonable value of the services of hn Whyte, as attorney for the receiver in this mat- r, is the sum of $1,800.00, and his fees are hereby ked at the sum of $1,800.00, which the Court finds be the reasonable value thereof." [R. 194.]

re is ample evidence to support the trial court's find- at the reasonable value of the Receiver's services 6,000.00. Gross receipts collected by the Receiver the three months period of the receivership ted to $94,153.59. [R. 105.] There was evidence record that various percentages, including 5% % of gross income, would be a reasonable man- nt fee. [R. 187, 374, 316.] Although 6% of 3.59 would be $5,649.21, and 5% of $94,153.59 be $4,707.67, there were other factors present which ustified the Court in raising the fee to $6,000.00, at amounts to roughly 6.3% of gross income.

system of management and bookkeeping before th
ceivership was terminated and he was forced to surr
possession of the assets and account for his stewar
Naturally, this state of affiairs placed a far greater
den upon him than would have resulted had he been
more time in which to put his house in order. [R. 18

In the second place, the Receiver was compell
spend four and one-half days in court defending h
ministration of the receivership against a violent
thereon by Richman, an attack which the District
found to be completely unjustified. The Receiver
was obliged to devote considerable time out of cou
preparing his defense to the attack on his administ
and to the taking of his deposition by Richman. [R
169.]

In the third place, in the words of the trial cour
Receiver was treated by Richman and his counsel
less respect than I have seen embezzlers treated w
was handling the criminal calendar of the court" [R
859], and was subjected to "a most critical and ins
scrutiny of his every act and omission in his admin
tion." [R. 187.] The Receiver is certainly entit
some additional compensation for being forced to s
to such indignity and abuse.

There is likewise ample evidence to support the
court's finding that the reasonable value of the atto
services is at least $1,800.00. Hubert Laugharn, a
known Los Angeles attorney with wide experience
field of receivers and receiverships [R. 559-561], te
that compensation of $1,000.00 a month to the Rec

t in his opinion the reasonable value of the attor-
urther services in defending the Receiver against
n's attack on his report and petition for fees alone
orth from $1,000.00 to $1,200.00. [R. 616-619.]
connection it has been held that a trial court has
ty to compensate a receiver's attorney for services
d by him in defending his client against baseless
of having failed in the proper performance of his
as receiver. (*Missouri & K. I. Ry. Co. v. Edson*
ir., 1915), 224 Fed. 79.

if the District Court had failed to make any find-
h respect to the reasonableness of the amounts al-
as fees to the Receiver and his attorney, it is obvi-
t it was in a better position to assess the reason-
lue of their services than is this Court, and unless
ourt can say that the compensation allowed is not
ed by the evidence, it should affirm the award.
. Tsang (1949), 90 Cal. App. 2d 538, 541.)

w comments are in order respecting the cases cited
ellant Richman at pages 59-62 of his opening brief.

have no quarrel with the statement of the consid-
s which should govern a court of equity in fixing
npensation of receivers, as they are set out on page
Richman's opening brief in a quotation from the
Eames v. H. B. Claflin Co. (2d Cir., 1916), 231
93. Richman's brief, however, omits a portion of
guage quoted from this case, which reads as fol-

"* * * The amount of a receiver's compensation

In *Cake v. Mohun* (1896), 164 U. S. 311, 41 L
447, cited at pages 60-61 of Richman's opening brie
appellate court, while recognizing that it would have
the receiver's compensation at a considerably less a
had the matter been presented to it originally, refu
tamper with the amount fixed by the trial court up
ground that "Great consideration will be paid to th
curring views of the auditor or master and the [l
courts respecting a mere matter of amount." (P. 3

As for the case of *Walton N. Moore Dry Goods*
Lieurance (9th Cir.), 38 F. 2d 186, cited at page
Richman's opening brief for the proposition that
ceiver's prior earnings are relevant in determinin
fees, we have no quarrel with this proposition either
do desire, however, again to call attention to the fac
for three or four years prior to January, 1947, th
ceiver received a net salary, before taxes, of $40,0
a year [R. 891-892, 367-368], and that from Oc
1948, to April, 1951, he received a salary of $20,0
per year from another employer. [R. 879-881.]

II.

The District Court Did Not Err in Orderin Receiver to Reimburse Himself From the M in His Possession to the Extent of $89.20, Out of Him for Copies of His Deposition That of His Attorney.

The depositions of the Receiver and his attorney
taken by Richman for use upon the hearing on th
ceiver's report and petition for fees and his counsel'
tion for fees. [R. 238.] They were introduced

States or in the Federal Rules of Civil Proce-
'costs shall be allowed as of course to the prevail-
rty unless the court otherwise directs, . . ." The
er and his attorney were prevailing parties and
an was a losing party in that the District Court
the Receiver's report "to be full and correct" [R.
nd awarding fees to the Receiver and his counsel.
vell settled that the cost to the prevailing party of
ng a copy of his deposition taken by the losing
is taxable against the losing party. (*Schmitt v.
ental-Diamond Fibre Co.* (N. D., Ill., 1940), 1
D. 109.)

III.

District Court Did Not Err in Refusing to Disqualify Itself to Settle the Receiver's Account and to Award Fees to the Receiver and His Attorney.

argument on this point has already been sufficiently
ped under subdivision B of our statement of the
ppearing at pages 11 to 12 hereof.

s respectfully urged that the order appealed from
be affirmed.

Respectfully submitted,

JOHN WHYTE,

Attorney for Appellee Roy E. Hallberg, as Receiver.

JOHN WHYTE,

In Propria Persona.